

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JERRY WILLIAM MCCLUNEY,
Petitioner,
v.
JEFFREY BEARD,
Respondent.

Case No.: 14CV1470 BEN (DHB)

ORDER:

**(1) ADOPTING REPORT AND
RECOMMENDATION;
(2) DENYING PETITION FOR
WRIT OF HABEAS CORPUS;
(3) DENYING CERTIFICATE OF
APPEALABILITY**

[Docket No. 27]

Petitioner Jerry William McCluney, a state prisoner proceeding *pro se*, commenced this action with the filing of a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Docket No. 1). Following briefing, on August 27, 2015, Magistrate Judge David H. Bartick issued a thoughtful and thorough Report and Recommendation recommending that the Petition be denied. (Docket No. 27). Objections to the Report and Recommendation were due by September 11, 2015. (*Id.*) No objections have been filed. For the reasons that follow, the Report and Recommendation is **ADOPTED**.

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1 A district judge “may accept, reject, or modify the recommended disposition” of a
2 magistrate judge on a dispositive matter. Fed. R. Civ. P. 72(b)(3); *see also* 28 U.S.C.
3 § 636(b)(1). “[T]he district judge must determine de novo any part of the [report and
4 recommendation] that has been properly objected to.” Fed. R. Civ. P. 72(b)(3).
5 However, “[t]he statute makes it clear that the district judge must review the magistrate
6 judge’s findings and recommendations de novo *if objection is made*, but not otherwise.”
7 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *see also*
8 *Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005). “Neither the Constitution nor
9 the statute requires a district judge to review, *de novo*, findings and recommendations that
10 the parties themselves accept as correct.” *Reyna-Tapia*, 328 F.3d at 1121.

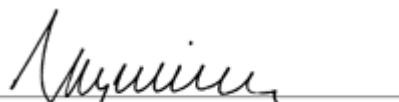
11 However, the Court has conducted a *de novo* review, and in the absence of any
12 objections, the Court fully **ADOPTS** Judge Barticks’s Report and Recommendation. The
13 Petition is **DENIED**.

14 The Court **DENIES** a certificate of appealability because the issues are not
15 debatable among jurists of reason and there are no questions adequate to deserve
16 encouragement. *See Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The Clerk of Court
17 shall enter judgment **DENYING** the Petition.

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19 **IT IS SO ORDERED.**

20 Dated: October 8, 2015

21 
22 Hon. Roger T. Benitez
23 United States District Judge

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